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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GREGORY ASHTON, EIRO FUKUDA, and
MASAHARU NISHIKAWA

Appeal 2009-001802
Application 10/824,122
Technology Center 3700

Decided:¹ June 22, 2009

Before TONI R. SCHEINER, DONALD E. ADAMS, and ERIC GRIMES,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims 1-13 and 15-17, all of the pending claims, which are directed to an absorbent article. The

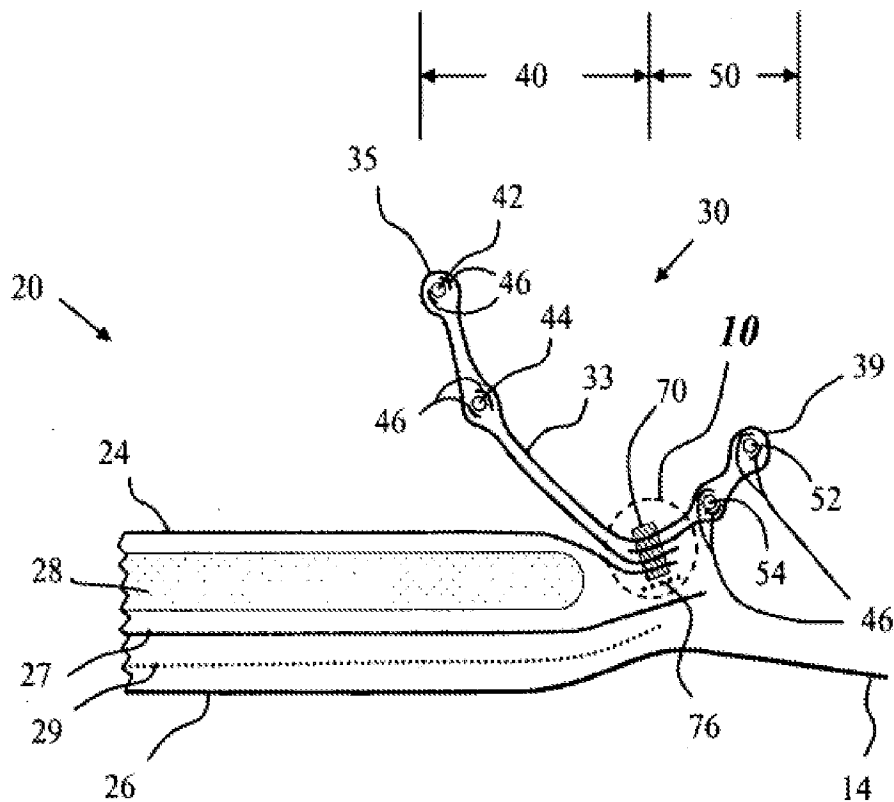
¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Examiner has rejected the claims as anticipated by the prior art. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

The Specification states that “[c]ontemporary absorbent articles have a topsheet, a backsheet, an absorbent core, a barrier cuff and a gasketing cuff” (Spec. 1: 20-21). “While providing an inner and an outer cuff within an absorbent article has its advantages, the resulting article is often too wide in the crotch area, thus causing discomfort for the wearer” (*id.* at 1: 28-29).

The Specification discloses an absorbent article having a “dual cuff . . . constructed of a continuous cuff material and enclosed by a cuff bond” (*id.* at 2: 5). The Specification’s Figure 2 is shown below:



The figure shows a fragmentary sectional view of an absorbent article, including a cross-section of the dual cuff (*id.* at 3: 8). The Specification describes the cuff as follows:

Dual cuff 30 has a proximate end 35, distal end 39, and regions therebetween identified as first cuff 40 and second cuff 50. Dual cuff 30 may be constructed from a continuous cuff material 33 that substantially envelopes the elastics [42, 44] of first cuff 40 and [52, 54] second cuff 50. . . . Moreover, cuff material 33 need only be enclosed/bonded at a single location, as exemplified by cuff bond 70, in order to substantially envelope elastics 42, 44, 52, 54, thus providing improved barrier properties by minimizing the number of potential leakable locations (e.g., bonding locations).

(*Id.* at 10: 18-28.)

The disclosed cuff design is said to provide a “reduction in overall width within the crotch region [that] has been discovered to provide significant comfort and wear properties” (*id.* at 15: 9-11).

Claim 1 is representative and reads as follows:

1. A unitary disposable absorbent article comprising:
an absorbent core having a garment surface and a body surface;
a liquid permeable topsheet positioned adjacent said body surface of said absorbent core;
a liquid impermeable backsheet positioned adjacent said garment surface of said absorbent core; and
an elastically contractible dual cuff having a proximate end and a distal end, said dual cuff being joined to said article by a cuff bond, said dual cuff having a first cuff and a second cuff, said first cuff being disposed between said proximate end and said cuff bond, said second cuff being disposed between said cuff bond and said distal end, said dual cuff being constructed of a continuous cuff material and enclosed by said cuff bond,
wherein said distal end is formed by said cuff material being folded, wherein said proximate end is formed by said cuff material being folded;
wherein said first cuff envelopes at least one first elastic, wherein said first

elastic has a first and second end, wherein said first elastic is secured to said first cuff near said first and second ends;
wherein said second cuff envelopes at least one second elastic, wherein said second elastic has a first and second end, wherein said second elastic is secured to said second cuff near said first and second ends;
wherein said first and second cuffs are barrier cuffs.

ANTICIPATION

Issue

The Examiner has rejected claims 1-13 and 15-17 under 35 U.S.C. § 102(b) as anticipated by St. Louis.² The Examiner finds that St. Louis discloses an absorbent article comprising all of the elements of claim 1, including a “dual cuff 19 . . . constructed of a continuous cuff material 174 and enclosed by the cuff bond 172” (Answer 3).

Appellants contend that the product disclosed by St. Louis does not include a dual cuff that is “enclosed by” a cuff bond, or elastics that are secured near their ends to the two cuffs, as required by the claims (Appeal Br. 5-7).

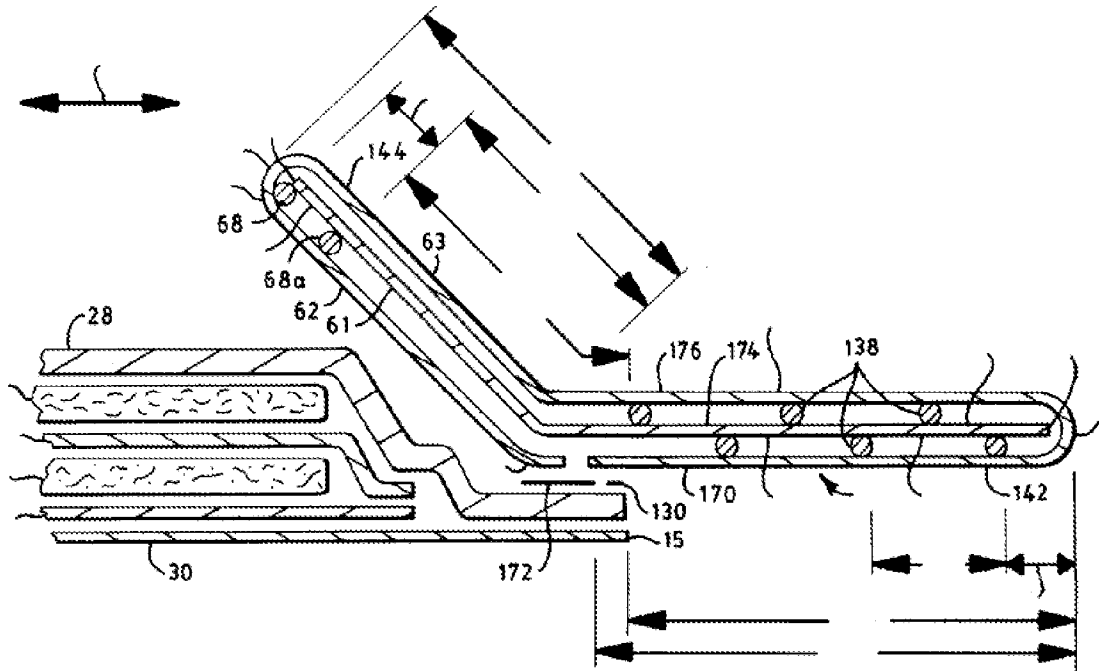
The issue presented in this appeal is: Did the Examiner err in finding that St. Louis discloses an absorbent article comprising a dual cuff enclosed by a cuff bond, and elastics secured near their ends to the cuffs?

Findings of Fact

1. St. Louis discloses an absorbent article comprising, among other elements, a “gusset-flap member [that] provides a leg gusset section and a containment flap section” (St. Louis, col. 2, ll. 6-7).

² St. Louis et al., U.S. Patent 5,993,433, issued Nov. 30, 1999.

2. St. Louis' Figure 6 is reproduced below (with unneeded reference numerals omitted):



The figure shows a “schematic, expanded, lateral cross-sectional view of a configuration of the gusset-flap member” (*id.* at col. 3, ll. 1-2).

3. St. Louis discloses that the gusset-flap member includes a “containment flap section **144** . . . integrally formed with a corresponding one of the leg gusset sections **142**” (*id.* at col. 4, ll. 53-55).

4. St. Louis discloses that the “outboard side portion **170** of the fabric layer **176** is arranged to wrap around at least one side edge of the barrier layer **174** and to extend inboard therefrom” (*id.* at col. 5, ll. 4-6).

5. St. Louis discloses that a “plurality of separate, longitudinally extending elastomeric members **138** is attached and sandwiched by the barrier layer **174** and the fabric layer **176**” (*id.* at col. 5, ll. 8-10).

6. St. Louis discloses that “the inboard side portion **62** of the gusset-flap fabric layer **176** is arranged to fold and wrap around an appointed

folding line or other region. The resultant, folded over portion can then be arranged to operatively sandwich . . . the second arrangement **68** of at least one longitudinally extending elastomeric member.” (*Id.* at col. 5, ll. 39-45.)

7. St. Louis discloses that each gusset-flap member “can be connected to at least one of the topsheet and backsheet layers with a gusset attachment **172**” (*id.* at col. 6, ll. 8-10).

8. St. Louis discloses that “the gusset attachment **172** includes an article attachment which secures the leg gusset section **142** to the article adjacent to its associated outwardly concave terminal side edge contour **15**” (*id.* at col. 19, ll. 4-8).

9. St. Louis discloses that “the invention can include a gusset perimeter bond **130** which attaches a terminal side edge of the topsheet **28** and/or backsheet **30** to the leg gusset section **142** at least within the crotch region” (*id.* at col. 19, ll. 27-31).

10. St. Louis discloses an embodiment of its absorbent article that does not include a gusset perimeter bond **130** (*id.*, Figure 5).

11. St. Louis discloses that the elastomeric members **68** in each containment flap section **144** can be attached to at least one of the barrier and fabric layer regions **61** and **63**, respectively, with a suitable securing mechanism, such as a selected pattern of adhesive or other type of bonding. For example, the adhesive may be applied by spraying adhesive discontinuous droplets or filaments, and/or may be applied by arranging generally continuous lines of adhesive in a selected pattern, such as a swirl pattern.
(*Id.* at col. 23, ll. 40-48.)

12. St. Louis discloses that, “[a]lternatively, the elastomeric members 68 can be attached . . . with a plurality of individual, longitudinally extending strips of adhesive” (*id.* at col. 23, ll. 52-55).

13. The Specification discloses that “[d]ual cuff 30 may be constructed from a continuous cuff material 33 that substantially envelopes the elastics of first cuff 40 and second cuff 50” (Spec. 10: 20-21).

14. The Specification discloses that “cuff material 33 need only be enclosed/bonded at a single location, as exemplified by cuff bond 70, in order to substantially envelope elastics 42, 44, 52, 54, thus providing improved barrier properties by minimizing the number of potential leakable locations (e.g., bonding locations)” (*id.* at 10: 25-28).

15. The Specification discloses that “[c]uff bond 70 may be adhesive, ultrasonic bonding, compression bonding, thermal bonding, combinations thereof, and any other suitable bonding means known in the art which is appropriate for the specific materials employed” (*id.* at 11: 12-15).

16. The Specification discloses that “[c]uff bond 70 may also join dual cuff 30 to topsheet 24” (*id.* at 11: 15).

Principles of Law

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.

In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

“[T]he words of a claim ‘are generally given their ordinary and customary meaning.’ . . . [T]he ordinary and customary meaning of a claim

term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005).

“[T]he meaning of a prior art reference requires analysis of the understanding of an artisan of ordinary skill.” *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1336 (Fed. Cir. 2008).

Analysis

St. Louis discloses an absorbent article that includes a gasket-flap member, or dual cuff, constructed of a continuous cuff material and having two cuffs formed by folding the material over a barrier layer so that each cuff envelopes an elastic member. St. Louis discloses that the gasket-flap member is attached to the absorbent article by a “gusset attachment.”

Appellants argue that St. Louis’ gusset attachment does not meet the “cuff bond” limitation of the claims on appeal because the claims require the dual cuff to be “enclosed by said cuff bond” (claims 1 and 15) (App. Br. 6). Appellants argue that, as used in the Specification, “enclosed” does not mean simply “bonded” but requires that the cuff bond “completely closes off the cuff material” (*id.*). Appellants argue that “the St. Louis reference does not appear to describe a gusset attachment completely closed off by [sic, closing off] a gusset-flap” (*id.*).

We are not persuaded by this argument. First, we agree with the Examiner that under the broadest reasonable interpretation “enclosed” is equivalent to “bonded.” The Specification states that the “cuff material 33 need only be *enclosed/bonded* at a single location” (FF 14) (emphasis added). While Appellants argue that this passage should not be interpreted

to say that enclosed means the same thing as bonded (App. Br. 5-6), the rest of the Specification supports just that interpretation. The element that is disclosed to “enclose” the cuff material is referred to as “cuff *bond* 70.” Bonds bond things, so if a bond is enclosing the dual cuff, then enclosing involves bonding.

The Specification also equates enclosing with bonding in its statement that “cuff material 33 need only be enclosed/bonded at a single location, . . . thus providing improved barrier properties by minimizing the number of potential leakable locations (e.g., bonding locations)” (FF 14). Since “enclosing” the cuff material at a single location minimizes bonding locations, the enclosing location is a bonding location.

In addition, St. Louis would anticipate the claims even if “enclosing” were interpreted to mean “completely closing off,” as Appellants argue. St. Louis discloses that gusset attachment 172 secures the entire gusset flap assembly, including leg gusset section 142 (the outboard flap), to the topsheet. St. Louis describes perimeter bond 130 as being optional (“the invention *can include* a gusset perimeter bond **130**” (FF 9) (emphasis added)). St. Louis discloses an embodiment that does not include perimeter bond 130 (FF 10). The most reasonable reading of St. Louis, therefore, is that gusset attachment 172 attaches both ends of the gusset material making up the gusset-flap assembly to the topsheet of its absorbent article, and therefore completely closes off the gusset-flap member.

Appellants also argue that St. Louis does not describe its elastic members as being secured near their ends to the cuffs: “[N]either the specification nor the figures of the St. Louis reference appear to describe any

particular location for affixing the elastomeric members 68, 68a, and 138. Thus, the St. Louis reference does not describe an embodiment wherein an elastic member is secured near its ‘first and second ends’” (App. Br. 9-10).

This argument is also unpersuasive. While it is true that St. Louis does not expressly disclose securing its elastic members near their ends, or along their entire length, we find that that teaching is implicit in St. Louis’ disclosure.

St. Louis discloses that its elastic members can be secured in a variety of ways, including using sprayed adhesive, continuous lines of adhesive, or strips of adhesive. St. Louis does not expressly state whether the adhesive should or should not be applied near the ends of the elastic members. But those of ordinary skill in the art would recognize that the elastic members would only function to contract the cuffs between points where the elastics were attached to the cuffs; including unattached ends on the elastic members would serve no functional purpose. It is reasonable to conclude, therefore, that those of skill in the art would have understood St. Louis’ disclosure to include elastic members attached at, or at least near, their ends to the cuffs.

Conclusion of Law

The Examiner did not err in finding that St. Louis discloses an absorbent article comprising a dual cuff enclosed by a cuff bond and elastics secured near their ends to the cuffs.

SUMMARY

We affirm the rejection of claim 1 as anticipated by St. Louis. Claims 2-13 and 15-17 fall with claim 1 because they were not argued separately. 37 C.F.R. § 41.37(c)(1)(vii).

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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